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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/769,158

01/29/2004

Richard C. Smith

M-15596 US

7774

32605

7590

03/01/2005

MACPHERSON KWOK CHEN & HEID LLP
1762 TECHNOLOGY DRIVE, SUITE 226
SAN JOSE, CA 95110

EXAMINER

DABNEY, PHYLESHA LARVINIA

ART UNIT

PAPER NUMBER

2643

DATE MAILED: 03/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/769,158

Applicant(s)

SMITH ET AL.

Examiner

Phylesha L Dabney

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 and 35 is/are rejected.
- 7) ☒ Claim(s) 34 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is in response to this application filed 29 January 2004 and PCT/US04/02675.

Claims 1-35 are pending.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-11, 13, 14, 19-20, 28-33, and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Nielsen (U.S. Patent No. 3,787,643).

Regarding claims 1-11, 13, and 32-33, as shown in figures 5-6, Niesen teaches a device for facilitating hearing, the device comprising: an earpiece configured to be captured at least partially within the conchae of an ear; and wherein the earpiece is configured for use in either ear and with at least one rib.

Regarding claim 14, Nielsen teaches a boss (46) having a bore (40, 42).

Regarding claim 19, Nielsen teaches an acoustic conduit (44).

Regarding claim 20, Nielsen teaches a transducer formed to the earpiece; and an electric conduit (near 26 closest to casing 10, 12).

Regarding claims 28-31, Nielsen teaches an apparatus corresponding to the method of claims 28-31. The method is inherent in that it simply provides logical implementation of the structure found in the preceding and subsequent claims.

Regarding claim 35, Nielsen teaches an earpiece comprising: a body (fig. 6); an acoustic coupler (14) having a bore, for attachment of acoustic tubing (18, 20).

2. Claims 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Feldman (U.S. Patent No. 6,122,388).

Regarding claims 21-24, Felman teaches a radio (col. 3 lines 12-15); an earpiece (fig. 5); a transducer (fig. 6); and a conduit (figs. 4-6) for transferring information from the radio to the earpiece.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 12, 15-18, and 25-27, are rejected under 35 U.S.C. 103(a) as being unpatentable over Nielsen.

Regarding claim 12, Nielson teaches at least one generally arcuate rib and at least one generally straight rib extending between the points of the arcuate rib (fig. 6). Nielsen does not teach the at least one generally straight rib as being in a vertical orientation; however the examiner takes official notice that it is well within the level of ordinary skill in the art to change the axial orientation, size, etc., of the ribs for aesthetic appeal and increased ear conformity since the ear is shaped in a general "D" shape. Therefore, it would have been obvious to one of

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ordinary skill in the art at the time the invention was made to construct the straight rib of Nielsen in a vertical orientation for the reasons stated above.

Regarding claims 15-18, Nielsen does not teach the specifics of the composition of the earpiece. However, it is known and extremely common for earpieces to be formed of injection molded polymeric material have Shore [A-D] Hardnesses in durometers of between 30-50, for example to create the desired hardness and resiliency of the polymeric material as needed for the specific application, such as earpieces for comfort to the user, and cost efficiency. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use an injection molded polymeric material in the construction of the earpiece of Nielsen for the reasons stated above.

Regarding claims 25-27, Nielsen teaches all of the limitations as presented in claim 1 above, except the earpiece being formed of polymer. It is known and extremely common for earpieces to be formed of injection molded polymeric material for cost efficiency in production. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a polymeric material in the construction of the earpiece of Nielsen for the reason stated above.

Allowable Subject Matter

Claim 34 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phylesha L Dabney whose telephone number is 703-306-5415.

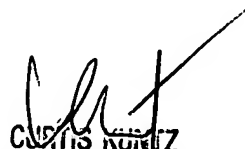
The examiner can normally be reached on Mondays, Tuesdays, Wednesdays, Fridays 8:30-4 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on 703-305-4708. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

February 16, 2005


PLD


CURTIS KUNTZ
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600